

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 36] NEW DELHI, SATURDAY, FEBRUARY 7, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 7th February 1953

S.R.O. 289.—WHEREAS the election of Shri Vithalbhai Ranchhodbhai Patel of Mehsana, Bombay State, to the Legislative Council of the State of Bombay, from the Mehsana-cum-Banaskantha Local Authorities constituency of that Council, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Nyalchand Virchand Sheth, Advocate of Vijapur, District Mehsana;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 323 OF 1952.

Exh. No. 834

CORAM:

Shri B. C. Vakil, B.A. (Hons.), LL.B.—*Chairman.*

Shri T. P. Ghogale, B.A. (Hons.), LL.B.,

Shri A. A. Adarkar, B.A., LL.B.—*Members of the Election Tribunal.*

To the matter of the Representation of the People Act, 1951.

AND

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951.

AND

In person.

In the matter of the Election Petition presented thereunder by Shri Nyalchand Virchand Sheth, residing at Vijapur, District Mehsana.—*Petitioner.*

Versus

Shri P. B. Patwarl.

1. Vithalbhai Ranchhodbhai Patel, residing at Mehsana.

Shri N. S. Parghi.

2. Krishnalal Motilal Sheth, residing at Patan, District Mehsana.

3. Ishver Chhagan Patel, residing at Chanasama, District Mehsana.

4. Vijaykumar Madhavlal Trivedi, residing at Mehsana.—*Respondents.*

This is an election petition filed by Shri Nyalchand Virchand Sheth, an Advocate from Vijapur, district Mehsana, to set aside the election of respondent No. 1 Vithalbhai Ranchhodbhai Patel who was declared elected as a member of the Bombay Legislative Council from Mehsana-cum-Banaskantha Local Authorities' Constituency at an election held on 8th April 1952. The petitioner as well as the four respondents were the duly nominated candidates. Respondent No. 1 was a Congress candidate who stood on the Congress ticket while the petitioner was an independent candidate. The scrutiny disclosed that the petitioner got 20 votes, respondent No. 1 got 180 votes, respondent No. 2 Krishnalal Motilal Sheth got 22 votes and respondent No. 3 got 7 votes. Respondent No. 4 Vijaykumar Madhavlal Trivedi was another Congress candidate who withdrew after the nomination of respondent No. 1 was found to be in order.

2. The petitioner dispatched to the Election Commission the present petition dated 20th June 1952 which reached the Election Commission on 23rd June 1952. The petitioner sought to get the election declared wholly void or the election of the returned candidate, that is, respondent No. 1, void chiefly on the allegations of the extensive prevalence of undue influence, of consideration of invalid ballot papers and of the alleged assistance given by Shri Dahyabhai M. Mehta, Secretary of the District Rural Development Board, Banaskantha, to respondent No. 1 with the connivance and or with the knowledge of respondent No. 1. As the allegations with regard to corrupt or illegal practice were required by the Act to be stated as provided in Section 83(2) of the Representation of the People Act and as the contention of respondent No. 1 was that with regard to some contentions no issue could be framed as the allegations were very vague and without proper particulars, the Tribunal heard the parties with regard to the framing of issues and passed order Ex. 23 in that connection. Issues were raised at Ex. 24 in consonance with order Ex. 23 and they are as under:—

- (1) Whether Shri Dahyabhai M. Mehta, Secretary of the District Rural Development Board, Banaskantha, at Palampur, is a person serving under the State of Bombay. Whether he has assisted respondent No. 1 in the election.
- (2) Whether respondent No. 1 or his agent has obtained, procured orabetted or attempted to obtain or procure the assistance of Shri D. M. Mehta for the furtherance of the prospects of election of respondent No. 1.
- (3) If issue No. 2 is found in the affirmative, whether the corrupt practice alleged was committed by respondent No. 1 or his agent or by any person with the connivance of respondent No. 1 or his agent.
- (4) Whether the petitioner proves that undue influence was exercised by Shri Dahyabhai M. Mehta, Doctor Sardarsing Thakore and Shri Sunderal Shah. Whether it is proved that undue influence prevailed extensively and there has not been a free election.
- (5) Whether undue influence has been exercised by respondent No. 1 or his agent or any other person with the connivance of respondent No. 1 or his agent?
- (6) Whether the petitioner proves that invalid ballot papers were counted as valid. Whether such counting materially affected the result.

The findings of the Tribunal are as under:—

- (1) Not necessary; no.
- (2) No.
- (3) It does not arise, if necessary no.
- (4) No; no.
- (5) No.
- (6) No; no, for the following reasons;

REASONS

3. As stated above, there are three major allegations relying on which the petitioner seeks to set aside the election as wholly void or to set aside the election of respondent No. 1, the returned candidate. It will be convenient to first discuss the allegations with regard to the invalid ballot papers being counted at the scrutiny and regarding the extensive prevalence of undue influence as the evidence with regard to these issues is limited. The method of voting by postal ballot was adopted. The allegation of the petitioner is that the presidents of the local authorities concerned were appointed attesting officers at the election by Notification No. 29/52 of 23rd February 1952 on the election committee and those presidents

who were working for a candidate in or about the election were specifically prohibited from attesting the postal ballot papers. The allegation of the petitioner further is that the presidents of nearly all the local authorities concerned who belonged to the Congress party or were otherwise Congress minded had still attested the ballot papers in contravention of the notification and these ballot papers were void and had no effect. It is not disputed by Shri Patwari on behalf of respondent No. 1 that the local officers who were actually working for a candidate were required by the notification not to attest the ballot papers. The case of respondent No. 1, as supported by his evidence, is that he came to know at the time of the scrutiny that Shri Dahyabhai had written Exs. 26 and 28 and, therefore, he himself agreed that voting papers attested by Shri Dahyabhai M. Mehta should not be counted at the scrutiny and that as a matter of fact the voting papers attested by Shri Dahyabhai Mehta were not considered. Respondent No. 1 has stated on oath that "the applicant Nyalchand scrutinised each and every ballot paper at the time of the scrutiny. The Returning Officer had told the candidates that they might scrutinise the ballot papers if they liked." Shri Nyalchand himself examined at Ex. 38 does not deny that he scrutinised the ballot papers at the time of the scrutiny. Again, the petitioner has not adduced any believable evidence that either Sardarsing Thakore or Shri S. V. Shah or any president of any local authority did actually do any election work on behalf of respondent No. 1. The petitioner has admitted in his cross-examination that he had no personal knowledge of any president of any local body having worked for the election of respondent No. 1. The allegation that the presidents of the local bodies worked for respondent No. 1 is made as an inference from Exs. 26 and 28 purporting to have been signed by the president of the Deesa Municipality. So far as Ex. 26 is concerned the word "Sahi" (signature) appears prior to the signature purporting to be of Sardarsing Thakore. It is not proved that Dr. Sardarsing Thakore signed any such letter or that he authorised anyone to sign it. Similarly, Ex. 28 is not proved to have been signed by Shri S. V. Shah. It is, therefore, not proved before the Tribunal that there was any other invalid ballot paper in addition to those actually excluded by the Returning Officer which were required to be excluded from the scrutiny. The petitioner himself was not very definite on this point. The Tribunal, therefore, hold that it is not proved that any invalid ballot paper was counted as valid. Even assuming that there was any invalid ballot paper counted as valid, it has not been shown that such counting materially affected the result. The whole constituency was the Local Authorities Constituency not only of Mehsana but of Mehsana as well as Banaskantha. The petitioner has not led any evidence as to the number of votes of the Councillors of Deesa Municipality that could have been vitiated by the attestation either of Sardarsing Thakore or Shri S. V. Shah. Out of the total votes numbering 253 there were, as deposed to by respondent No. 1, 38 voters who could vote from Banaskantha Constituency. There is a wide gap between the number of votes secured by respondent No. 1 which is 180 and the number of votes secured by the petitioner which is 20 only. Even if a few votes attested by Sardarsing and S. V. Shah were invalid, which in fact are not shown to have been invalid, that could not have affected the result of the election.

4. The allegations with regard to undue influence have been embodied in issues Nos. 4 and 5. The persons who are said to have exercised undue influence are Shri Dahyabhai M. Mehta, Dr. Sardarsing Thakore and Shri Sunderlal Shah. The undue influence which is alleged is this: Shri Dahyabhai M. Mehta was the Secretary of the District Rural Development Board, Banaskantha, and was also the president of the District Local Committee of Management of Banaskantha district at Palanpur. He had written pressing letters to the voters on or about the 26th February 1952 to vote for Shri V. R. Patel and none else. The president of the Deesa Municipality Dr. Sardarsing Thakore and in his absence Shri S. V. Shah were also subscribing to these letters and these three gentlemen along with respondent No. 1 induced the electors of the constituency to vote for respondent No. 1 by making them feel that he was a government sponsored candidate. It is also urged that when the voters received the ballot papers from the post offices respondent No. 1 approached the voters in the company of one of the presidents and induced them to sign the ballot paper and deliver it to them getting it attested by the president of the local authority who accompanied respondent No. 1. It is also urged that respondent No. 1 showed the already collected votes to the voters and by impressing upon them that it was no use voting for other candidates managed to get the votes of the voters in his favour. It is now to be examined whether any of these allegations is made out. Whether Dr. Sardarsing or Shri Sunderlal Shah signed any letters or not has been discussed while dealing with issue No. 6 and it has already been held that it has not been proved satisfactorily that any of these gentlemen signed a letter similar to Exs. 26 and 28. Respondent No. 1 Shri Vithalabhai himself admitted that there were a few ballot papers bearing the attestation of Shri D. M. Mehta but in view of the facts that it was brought to his notice at the time of the scrutiny that he

had written Exs. 26 and 28 these ballot papers were excluded from computation at his own request. Exs. 26 and 28 do recommend that the addressee may cast the vote in favour of respondent No. 1 who was a Congress candidate but there is nothing in Exs. 26 and 28 to show that any undue influence was exercised upon the persons to whom they were addressed. As a matter of fact the recommendation is made in form of a request. Apart from the fact that the writing of Exs. 26 or 28 may amount to assistance, it cannot be held that the writing of a letter like Exs. 26 and 28 would amount to undue influence. It has not been shown that Shri Dayabhai M. Mehta was in a position to dominate over the will of the persons to whom they were addressed. Merely because the addressee may be a member of the District Rural Development Board he was not bound to vote according to the recommendation of the president. There is no evidence led by the petitioner to show that either Dr. Sardarsing Thakore or Shri Sunderlal Shah actually accompanied respondent No. 1 when he approached his voters. The petitioner has deposed in his evidence Ex. 38 as under:—

“I cannot give the name of any particular voter whose signed ballot paper was collected by respondent No. 1 or his agent or worker. This was the general sense of the voters I met. Lallubhai Chhunchha is the only person whose name I mentioned as a voter who was approached by respondent No. 1 with the bundle of ballot papers with him. I do not know whether respondent No. 1 told Lallubhai about the number of votes that he collected. I cannot mention the name of any particular voter who was approached at his residence by respondent No. 1 along with the president of Local Authority for the purpose of attestation. I have also no personal knowledge of any President of any Local Body having worked for the election of respondent No. 1.”

It is difficult to believe the petitioner when he says that when he approached the voters after the ballot papers were received by them the voters in general told him that respondent No. 1 or his agent or worker had taken away the ballot papers. The total number of voters consists of more than 200 persons and if most of such voters were approached by respondent No. 1 or his agent and their signed ballot papers were collected by them it would have been easy for the petitioner to mention a few of the voters. The petitioner does not name any of them as he would be faced with the problem of the necessity to examine that voter as a witness. As it would be shown later, the whole structure of the petition is based on Exs. 26 and 28 and Shri Lallubhai Chhunchha. Even Shri Lallubhai Chhunchha, Ex. 54, who has stated that respondent No. 1 had come with one Lachhaji Hinduji to press him to put his first preference on the ballot paper in their presence, does not say that respondent No. 1 told him that he had collected the signed ballot papers of other voters. Shri Lallubhai does state that respondent No. 1 had a leather bag with him at that time but he does not support petitioner Nayalchand that respondent No. 1 collected ballot papers with him to impress upon the voter that he was going to get a large number of votes and they should also vote for him as he was going to be a successful candidate. The petitioner has deposed in his evidence that there was a conspiracy between Shri Dahyabhai M. Mehta, respondent No. 1, Shri S. V. Shah and Dr. Sardarsing who impressed upon the voters that respondent No. 1 was a Government sponsored candidate and also supported by the local authorities concerned. No such conspiracy is proved and not a single voter has been examined to show that anyone of these gentlemen approached him and tried to impress in this manner. Reading the evidence of petitioner Nayalchand as a whole it becomes amply clear that he came to know that Exs. 26 and 28 were addressed by Shri Dahyabhai M. Mehta and that Shri Dahyabhai M. Mehta had accompanied respondent No. 1 to Shri Lallubhai. From this he raised an inference that Shri Dahyabhai had written letters like Exs. 26 and 28 to each voter and that some of the signatories of Exs. 26 and 28 had accompanied respondent No. 1 to each voter. Because he came to learn that Shri Dahyabhai M. Mehta accompanied respondent No. 1 to Shri Lallubhai and to Shri Mehsuria he inferred that he must have accompanied respondent No. 1 to many other voters. Because a recommendation was made in Exs. 26 and 28 that vote may be cast in favour of respondent No. 1 who was a Congress candidate, the petitioner inferred that such a letter written by the present of the District Rural Development Board must amount to undue influence on the person who was addressed. There is no tangible evidence about undue influence whatsoever and the petitioner has failed to show that any undue influence was exercised as alleged either by respondent No. 1 or his agent or any worker of his. It has not been proved that Shri Dahyabhai, Dr. Sardarsing or Shri Sunderlal Shah exercised any undue influence. It would have also to be shown that the undue influence prevailed extensively and there has not been free election. All that the petition has tried to show is that Shri Dahyabhai M. Mehta had addressed some letters to the member of the District Rural Development Board. The electorate consists of about 250

voters and there is no question undue influence prevailing extensively even if Exs. 26 and 28 amounted to any undue influence. No undue influence is shown to have been exercised over Shri Lallubhai Chhunchha or Shri Mehsuria. The reliability of their evidence and the weight to be attached to it will be considered in detail when issues Nos. 1 to 3 are being discussed. But even assuming that what they state is true, it is not proved that any undue influence was exercised. Shri Mehsuria has only disposed that a recommendation was made. Shri Dahyabhai was not in a position to exercise any undue influence over Shri Mehsuria. Shri Lallubhai has only said that respondent No. 1 accompanied by Shri Dahyabhai M. Mehta had personally gone to him on 8th March 1952 to canvass for respondent No. 1. Neither a letter like Exs. 26 and 28 nor the visit of Shri Dahyabhai exercised any undue influence on him. It is also not shown that respondent No. 1 knew about Shri Dahyabhai M. Mehta writing any letters like Exs. 26 and 28 and that he connived at it. The alleged conspiracy is not proved at all. The result is that findings on issues Nos. 4 and 5 should be in the negative.

5. The last ground of attack and the one with regard to which the petitioner has been rather emphatic is with regard to a person serving under the State of Bombay assisting respondent No. 1 in his election with his knowledge or connivance. The question which was hotly contested between the petitioner on the one hand and respondent No. 1 on the other was the question whether Shri Dahyabhai M. Mehta, Secretary of the District Rural Development Board, Banaskantha, at Palanpur was serving under the State of Bombay or not. However, the finding on that issue will not help the petitioner unless he proved that respondent No. 1 or his agent had obtained, procured or abetted or attempted to obtain or procure the assistance of Shri Dahyabhai M. Mehta for the furtherance of the prospects of election of respondent No. 1, that Shri Dahyabhai M. Mehta had as a matter of fact given assistance to respondent No. 1 for the furtherance of the prospects of his election and that this was with the knowledge or connivance of respondent No. 1. There are two ways in which Shri Dahyabhai M. Mehta is said to have assisted respondent No. 1. One is that Shri Dahyabhai M. Mehta wrote Exs. 26 and 28 to Shri Lallubhai Chhunchha and to some other members of the District Rural Development Board. This fact is not denied by respondent No. 1, who says that he came to know about the writing of Exs. 26 and 28 at the scrutiny when the petitioner produced evidence about it before the Returning Officer. He denies any previous knowledge, consent or connivance. It has already been observed that a conspiracy is merely alleged and there is no proof whatsoever with regard to it. From the mere fact that Shri Vithalbhai was at Palanpur on 25-2-1952 and he happened to meet Shri Dahyabhai at Palanpur the petitioner wants the Tribunal to conclude that a conspiracy must have come into existence at that time and respondent No. 1 must have known that Shri Dahyabhai M. Mehta was going to address letters like Exs. 26 and 28. Now, the evidence shows that respondent No. 1 was officially informed by the Gujarat Prantik Samiti of his having been given a ticket on 26th February 1952. The parliamentary board of the Gujarat Prantik Samiti has met at Palanpur on 24th February 1952 in connection with the election of a candidate for Banaskantha District Local Board. The parliamentary board had asked respondent No. 1 to meet them and he, therefore, met them at Palanpur. Respondent No. 1 admits that he might have seen Shri Dahyabhai on that occasion but definitely states that he had no talk with Shri Dahyabhai then. Merely because respondent No. 1 met Shri Dahyabhai in the last week of February it cannot be concluded that Shri Dahyabhai must have necessarily told him that he was going to assist him and he was going to write letters like Exs. 26 and 28 to further his prospects at the election. It has not been shown that at any time prior to the scrutiny respondent No. 1 ever knew of Shri Dahyabhai M. Mehta having written any letters like Exs. 26 and 28. It, therefore, follows that even if the writing of Exs. 26 and 28 may amount to assisting respondent No. 1 for the furtherance of the prospects of his elections respondent No. 1 had not obtained, procured or abetted or attempted to obtain or procure such assistance and that it is not shown that there was any knowledge of or consent by respondent No. 1 to Shri Dahyabhai M. Mehta's giving such assistance or connivance on the part of respondent No. 1 at Shri Dahyabhai's doing so.

6. The only thing which now remains to be seen is whether Shri D. M. Mehta assisted respondent No. 1 for the furtherance of the prospects of his election by accompanying respondent No. 1 to Shri Lallubhai Chhunchha as well as Shri Mehsuria and by canvassing their votes in favour of respondent No. 1. In this connection it is pertinent to note that the allegation in the petition is that Shri Dahyabhai moved with Shri V. R. Patel to secure votes for him by approaching individual voters before and after the receipt of ballot papers by them. It is not the allegation of the petitioner that Shri Lallubhai and Shri Mehsuria were the only two persons from whom Shri Dahyabhai canvassed votes for respondent

No. 1. So far as voters other than Shri Lallubhai and Shri Mehsuria are concerned, the petitioner has not been able to give a single instance of their being approached by respondent No. 1 in the company of Shri Dahyabhai Mehta or Shri Dahyabhai Mehta having asked any of such voters to cast his vote in favour of respondent No. 1. Ultimately at the time of the arguments the petitioner confined himself to the case of these two voters only and urged that even if he proved that there was a single instance in which Shri D. M. Mehta assisted respondent No. 1 he was entitled to succeed. It is true that even if a few instances or a single instance are or is satisfactorily established of Shri Dahyabhai having assisted respondent No. 1 with his knowledge or consent the petitioner would succeed. But the fact that there are more than 200 electors and the petitioner is unable to adduce any evidence except that of Shri Lallubhai and Mehsuria with regard to them, is a circumstance which must be minutely scrutinized in coming to the conclusion whether any such assistance was rendered at all. While weighing the evidence of Shri Lallubhai and Shri Mehsuria the following background will have to be kept in mind. Shri Lallubhai Chhunchha is a pleader who has been practising at Deesa and is a member of the Mehsana District Bar to which the petitioner also belongs. Shri Lallubhai was a member of the Deesa municipality and he was also a member of the Local Committee of Management of Banaskantha in 1951. He was also a member of the Parliamentary Congress Party. When Dr. Sardarsing proceeded on leave Shri Lallubhai acted as the Vice-President for some time. Subsequently there happened to be a rift and Shri Lallubhai Chhunchha resigned. He also left the Congress in November, 1951. He had filed a nomination paper from the Deesa-Palanpur Constituency for Legislative Assembly as an independent candidate but subsequently withdrew his nomination. It is, therefore, amply clear that the relations of Shri Lallubhai with his colleagues in the Deesa municipality and the Congress party were not cordial after November 1951 and that he no longer liked to remain in their fold. When Shri Dahyabhai sent letter like Exs. 26 and 28 in the D.L.C. envelopes bearing the D.L.C. stamps it was Shri Lallubhai who protested in that connection to the Collector, Banaskantha. In that letter the complaint was only with regard to Shri Dahyabhai writing letters using the D.L.C. envelopes and stamps but there was no suggestion that Shri Dahyabhai was assisting the Congress candidate in any other manner. Shri Mehsuria is a client of Shri Lallubhai. The evidence of Shri Lallubhai and Shri Mehsuria will have to be read in the background mentioned above.

7. Even taking the evidence of Shri Lallubhai Chhunchha and Shri Mehsuria and the petitioner it is not quite consistent. It is very difficult for any person to show that some oral talk that is alleged to have taken place did not take place at all. When there are some contradictions with regard to the material part and circumstances relating to that talk it becomes difficult to accept the alleged talk. The petitioner's allegation is that Shri Dahyabhai Mehta accompanied respondent No. 1 to Shri Lallubhai as well as Shri Mehsuria and Shri Dahyabhai canvassed the vote of Shri Lallubhai as well as that of Shri Mehsuria in favour of respondent No. 1. The petitioner himself has no personal knowledge of what happened at those meetings. The petitioner met Shri Lallubhai Chhunchha twice, once before Shri Lallubhai received the voting papers and the second time after he received them. On the first occasion the petitioner was told about Shri Lallubhai having received Exs. 26 and 28 and that Shri Lallubhai was considering for whom to vote. The second time the petitioner saw Shri Lallubhai in the last week of March and even spent the night at Shri Lallubhai's place at his request. All that the petitioner says about the second meeting is that Shri Lallubhai's reply was that he would consider and decide for whom to vote. The petitioner does not remember that Shri Mehsuria had any particular talk with him in connection with respondent No. 1. The petitioner does not remember any further particular talk between him and Shri Lallubhai with regard to respondent No. 1 except what is described above. It means that though Shri Lallubhai told the petitioner that Shri Dahyabhai had written two letters at the time of the first meeting with Shri Lallubhai, Shri Lallubhai did not tell the petitioner when petitioner spent a night with him that Shri Dahyabhai had pressed him to vote for respondent No. 1 in the presence of respondent No. 1.

8 Shri Lallubhai had written a letter of protest to the Collector of Banaskantha with regard to the conduct of Shri Dahyabhai. The relations of Shri Lallubhai with the Congress and the Congress workers after November 1951 have already been stated above. It would not be very probable that in such circumstances Shri Dahyabhai would consider that he would carry much weight with Shri Lallubhai and respondent No. 1 also would not consider worth his while to persuade Shri Lallubhai through Shri Dahyabhai Mehta. Shri Lallubhai Chhunchha has deposed at Ex. 54 that respondent No. 1 had taken with him Shri Lachhaji Hinduji who was once the employer of Shri Lallubhai and if this had been possible it would not be very probable that the services of Shri Dahyabhai should be utilized to persuade

Shri Lallubhai to vote for respondent No. 1. Shri Lachhaji, who as admitted by Shri Lallubhai was once his employer, would be in a much favourable position to influence Shri Lallubhai rather than Shri Dahyabhai who had not as a leading Congressman of the district harmonious relations with Shri Lallubhai. Shri Lallubhai has deposed that after he received Exs. 26 and 28 he had shown the letter which he had written to the Collector to Shri Mehsuria because he thought that there has been a misappropriation of the public money of the local body. He also says that he had a talk with Shri Mehsuria that all candidates were new so far as he and Shri Mehsuria were concerned and that he had discussion with Shri Mehsuria for whom he and Shri Mehsuria should vote. Shri Lallubhai has further deposed that he had a discussion with Shri Mehsuria generally as to whether they should vote for a Congress candidate or an independent candidate but they had not reached any decision. Shri Mehsuria, according to Shri Lallubhai, did not tell him about his reactions about the visit of respondent No. 1 or about his reactions after the visit of the petitioner. Shri Mehsuria, however, does not talk about Shri Lallubhai showing him the letter written by him to the Collector and denies that there was any talk with Shri Lallubhai with regard to the voting for respondent No. 1 or with regard to the election of respondent No. 1. If Shri Mehsuria did not talk about the visit of respondent No. 1 to Shri Lallubhai or to the petitioner it is difficult to see how the petitioner thought of examining Shri Mehsuria. The obtaining, procuring or abetting or attempting to obtain or procure any assistance for the furtherance of the prospects at the election by any person serving under the State amounts to a corrupt practice under Section 123(8) of the Representation of the People Act and it also entails upon the candidate a disqualification. It is a serious allegation amounting to a quasi criminal charge which should be made out by satisfactory and convincing evidence. In the present case it is only Shri Lallubhai Chhunchha who says that Shri Dahyabhai accompanied respondent No. 1 to canvass his vote for respondent No. 1 while Shri Mehsuria says that Shri Dahyabhai only recommended that he should vote for respondent No. 1. Shri Mehsuria is the client of Shri Lallubhai. Shri Lallubhai has broken away from the Congress and resigned his seat after November 1951 and his relations with the Congress and the Congress workers are not cordial. He had even protested to the Collector with regard to the conduct of Shri Dahyabhai. There are about 250 voters in the whole constituency and the petitioner says that he had contacted almost every one of them. Though the allegation of the petitioner is that Shri Dahyabhai Mehta assisted respondent No. 1 and canvassed votes of the voters for him, the only evidence that he offers at the hearing is the evidence of Shri Lallubhai Chhunchha and his client Shri Mehsuria. In the background of Shri Lallubhai's relations with the Congress and the Congress workers and in view of the fact that the evidence of independent witnesses was obtainable but is not led it would be difficult to hold that the petitioner has made out the case of assistance by Shri Dahyabhai by satisfactory and convincing evidence. It would not be safe to act on such evidence as is produced before the Tribunal and to hold that a charge entailing a disqualification is made out. As no assistance by Shri Dahyabhai to the knowledge and consent of respondent No. 1 or with his connivance has been made out, it is not necessary to enter into the question whether Shri Dahyabhai M. Mehta was at the relevant time a person serving under the State of Bombay or not because even a finding in favour of the petitioner on that question will not help the petitioner.

9. At the sitting of the Tribunal at Palanpur respondent No. 1 had addressed a letter, Ex. 78, dated the 18th December 1952 to the Tribunal intimating that he had resigned his seat as a member of the Bombay State Legislative Council from the Mehsana-cum-Banaskantha Local Authorities' Constituency and even in Ex. 78 he has mentioned that he tendered his resignation of such membership. Notices were issued to the petitioner as well as to respondent No. 1 to appear before the Tribunal on 27th January 1953 at Ahmedabad. Shri Vithalbhai could not appear but his Advocate Shri Patwari stated for him that it was a fact that he had resigned and that he had no interest in retaining his seat as a member. By that time the Deputy Secretary to Government and the Chief Electoral Officer, Bombay, had also sent a copy addressed to the Secretary, Election Commission, India, with regard to the holding of fresh election due to the vacancy caused by the resignation of respondent No. 1. Therefore, so far as the membership of respondent No. 1 is concerned it has terminated in view of his own resignation, yet the Tribunal had to come to its own decision on merits.

10. The result is that the petition should be dismissed. So far as costs are concerned, there is no reason why there should be a departure from the general rule that costs shall follow the event. The Tribunal thinks that the petitioner should pay to respondent No. 1 Rs. 200 as costs of and incidental to the petition looking to the protracted nature of the proceeding. Respondents Nos. 2, 3 and 4 should bear their own costs.

ORDER

Election Petition No. 323 of 1952 is dismissed. The petitioner shall bear his own cost and shall pay to respondent No. 1 Rs. 200 by way of costs of and incidental to the petition. Respondents Nos. 2, 3 and 4 shall bear their own costs.
Dated the 30th January, 1953.

The 30th January, 1953.

(Sd.) B. C. VAKIL.

(Sd.) T. P. GHOGALO.

(Sd.) A. A. ADARKAR.

[No. 19/323/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.